

Section V: Laws

☐ Law Updates

Update #1: ☐ Summary of key domestic violence related legislation of the 2004 legislative session.

Law Update #1 of the 3rd Edition¹

Key domestic violence related legislation of the 2004 legislative session

- **Public Act 04-12: An Act Concerning the Office of Protection and Advocacy for Persons with Disabilities.** (*Effective October 1, 2004*).

Under the law, battered women's counselors (FVVA's) must make a report to the Office of Protection and Advocacy for Persons with Disabilities [OPA] when they have "reasonable cause to suspect or believe that any person with mental retardation has been abused or neglected."

This Act shortens, from five days to 72 hours, the time within which mandated reporters must make such a report. Mandated reporters must also submit a written report to OPA not later than five calendar days after making the initial report.

- **Public Act 04-66: An Act Concerning Dual Arrests in Family Violence Cases.** (*Effective October 1, 2004*).

This Act changes the mandatory arrest law in family violence incidents and specifically states that a police officer is *not required* to arrest a person if the police officer believes the person used physical force in self defense. The officer still has the *option* to make an arrest, but the mandatory arrest law does not require it.

Connecticut's law on self defense is defined by statute and extensive case law. The technical term for self defense is "justification." An act of physical violence may be legally "justified" when a person *uses reasonable physical force* to defend against what that person *reasonably believes* to be the use or imminent use of physical force. C.G.S. §53a-19(a) When a crime is "justified" it means the defendant is not guilty of the crime and should not be punished for the action.

Determining whether a person acted in self-defense is not easy. It involves a complicated analysis of the law, facts of the case, and context of the incident. If the accused is a victim of domestic violence, that context is a situation in which her partner has subjected her to a pattern of violence and abusive control.

¹ The information contained in this Law Update has also been incorporated into the text of the 3rd edition of the FVVA Resource Manual.

A police officer may still decide to arrest someone who claims to have acted in self-defense, particularly if that person caused serious physical injury to a family or household member. After the arrest, it will be up to the prosecutor, Family Violence Intervention Unit and defense counsel to evaluate the person's claims of self-defense.

CROSS REFERENCE: SECTION III – TAB – ADVOCACY – CERTAIN POPULATIONS – VICTIMS OF DOMESTIC VIOLENCE CHARGED WITH CRIMES; AND SECTION IV – LEGAL ISSUES – TAB – POLICE/ARREST.

☐ **Public Act 04-121: an Act Concerning a Sexual Assault Victims Account.** *(Effective July 1, 2004).*

This Act creates a trust fund to pay for sexual assault crisis services for victims of sexual assault in Connecticut. The money in this trust fund will come from a new fine of one hundred fifty-one dollars that the court must impose, in *addition* to other fines, fees or costs, any time a defendant is convicted, pleads guilty or nolo contendere to :

- certain charges of sexual assault; or
- risk of injury to a minor.

NOTE: the Act appears to require courts to impose this fine even if the act that endangered the child was *not* sexual in nature. The Act covers all conduct that constitutes risk of injury under Connecticut law.

☐ **Public Act 04-135: An Act Concerning Hate Crimes.** *(Effective October 1, 2004)*

Under Connecticut law, the official name for hate crimes is “intimidation based on bigotry or bias.” C.G.S. §§ 53a—181j, 181k, 181l. A person is guilty of the crime of intimidation based on bigotry or bias when that person maliciously and intentionally harms or threatens to harm another person or that person's property because of the other person's actual or perceived:

- **race;**
- **religion;**
- **ethnicity; or**
- **sexual orientation.**

A person who is convicted of a hate crime:

- is subject to the State's persistent offender statutes;

- may be required to participate in anti-bias crime education programs or hate crimes diversion programs; and
- may be sued in a civil case for triple damages for injuries.

This Act also makes it a hate crime to intimidate or harass a person because of that person's actual or perceived:

- **disability; or**
- **gender identity or expression**, which the Act defines to mean "the person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different than that traditionally associated with the person's assigned sex at birth."

NOTE on possible application in family violence cases: Prosecutors can charge a defendant with any other crime that he or she committed while carrying out the hate crime, such as assault or threatening. It is unclear whether prosecutors might also add a charge of "intimidation based on bigotry or bias" in family violence cases when the defendant has harassed or intimidated the victim because of her gender identity or expression. Advocates should call CCADV and the Legal Advocacy Project with any concerns about how this law is implemented.

CROSS REFERENCE: SECTION I – TAB – ADVOCACY – CERTAIN POPULATIONS – LESBIAN, GAY, BISEXUAL AND TRANSGENDER VICTIMS OF DOMESTIC VIOLENCE.

- **Public Act 04-165: An Act Concerning Information Provided to the Victim by the Court when an Accused is Tested for Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.** *(Effective October 1, 2004)*

Under the law, when a defendant is charged with certain sexual offenses, the criminal court *may* order the defendant to undergo testing for venereal diseases and HIV. The victim in that case *may* be informed of the test results. [C.G.S. § 54-102a]

When a defendant is convicted of certain sexual offenses, the court *must* order the defendant to undergo HIV testing if the victim requests it. The victim has a right to receive these test results. [C.G.S. §54-102b]

This Act requires a court that orders a defendant to undergo HIV or venereal disease testing to provide the victim with:

- certain educational materials about HIV and AIDS;
- information about and referral to HIV testing and counseling for victims of sexual assault; and
- referrals and information regarding rape crisis centers.

NOTE: a victim who receives information about a defendant's HIV status must obey State laws that prohibit further disclosure of HIV information.

CROSS REFERENCE: SECTION IV – TAB – LEGAL ISSUES – CONFIDENTIALITY